

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Earl A. Waterman

Date application filed with the Town Clerk: February 16, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 3.321 of the Zoning Bylaw, to add a second dwelling unit to create a two-family house.

Location of property: 353 Pelham Road, (Map 15B, Parcel 59, R-N Zone)

Legal notice: Published in the Daily Hampshire Gazette on February 23, 2005, and March 2, 2005, and sent to abutters on February 23, 2005.

Board members: Tom Simpson, Barbara Ford and Susan Pynchon

Submissions:

Prior to the public hearing the applicant submitted the following documents:

- A sketch plan, entitled "Site Plan", showing the northern portion of the property, including the existing house, the proposed addition, the existing garage, the existing driveway and existing landscape plantings in the vicinity of the house;
- A sketch plan entitled "Parking Plan", showing the proposed locations for the four required parking spaces;
- A sketch plan entitled "Floor Plan", showing the first floor plans of the existing unit and the proposed unit;
- A sketch plan entitled "Upstairs of Old Part", showing the second floor of the existing unit;
- A series of three sketch plans, entitled "Proposed Kitchen", showing different portions of the kitchen for the proposed unit;
- A series of three drawings, entitled "Elevation Plan", showing the west, south and east elevations of the proposed unit;
- A Management Plan, dated January 29, 2005, discussing storage, outside lighting, landscaping and property maintenance for the property.
- A document entitled "Landscaping", outlining the existing conditions and the applicant's proposed plans for landscaping the property.

The Planning Department submitted Memorandum Re: ZBA FY2005-00019, discussing zoning, dimensional requirements, parking, planting, lighting, historical issues, floor plans, the management plan, ongoing review, and phased growth.

In addition, two letters were submitted by interested parties expressing concerns and opposition to the application. These are on file in the Planning Department. The letters are as follows:

- A letter dated March 3, 2005, from Robert A. Trasher and Erika A. Hamilton, the son and daughter-in-law of Mr. and Mrs. Robert F. Trasher, of 367 Pelham Road, abutters to the property.
- A letter dated March 10, 2005, from Thomas and Christine Warger, of 156 Alpine Drive, abutters to the property.

Prior to the continued public hearing on April 28, 2005, the applicant submitted the following documents:

- Drawings entitled "Preliminary Perspectives" showing the existing and proposed structures from six different points of view, prepared by F. R. Wilson of Shutesbury.
- Drawings entitled "East Elevation", "North Elevation", "West Elevation", and "South Elevation", prepared by F. R. Wilson, dated March 25, 2005.
- Drawings entitled "Foundation Plan", "First Floor Plan", "Second Floor Plan", "Roof Plan", and "Section at A-1" dated March 25, 2005.
- A document entitled "Special Permit Findings" prepared by Mr. Waterman, in response to the criteria listed in Section 10.38 of the Zoning Bylaw, including a note regarding Mr. Waterman's plans for the future of the property.
- A document entitled "Management - Lights", showing a plan of exterior lights and text regarding the condition of the existing lights and plans for new lights.
- A revised "Management Plan" dated April 22, 2005, listing the owner as the responsible party for all property maintenance issues.
- A revised Site Plan showing existing and proposed plantings along with a text describing the applicant's landscaping plans.

Site Visit: March 8, 2005

Board members Tom Simpson, Barbara Ford and Susan Pynchon attended the site visit. They were met by the applicant, Earl Waterman. It was snowing heavily on the day of the site visit and so it was not possible to completely view the conditions on the property. At the site visit the Board observed the following:

- The location of the property in a residential neighborhood in the eastern part of Amherst, near the Pelham town line;
- The existing, historical, single-family, wood frame house;
- The existing driveway, parking area and garage building;
- The neighboring houses on the east and west sides;
- The mature trees in the neighborhood and along Pelham Road;
- The existing landscape plantings, including shrubs and large trees scattered throughout the property, and an evergreen hedge along the eastern property line;
- The small, rear portion of the existing dwelling unit, which is to be removed, and which currently houses a washing machine and dryer;
- The location of the proposed dwelling unit at the rear of the existing unit.

Public Hearing: March 10, 2005.

At the public hearing, Earl Waterman, the applicant, presented the petition. He made the following comments and presented the following items:

- He received a demolition permit a few years ago to remove three rooms from the back of the house, which he has done.
- He showed pictures of the old windows and the old house with the back portions still in place.
- He presented sketches, which he had drawn, of the proposed building.
- He stated that the existing house has only one large double bedroom which can be divided in two with the addition of a partition.
- He noted that the existing house doesn't have enough bedroom space to attract students as tenants.
- He presented a plan showing the driveway and the existing and proposed dwelling units.

The Board asked Mr. Waterman to describe what he was intending to do. Mr. Waterman stated that he is intending to replace the portions of the house that were demolished with a new, more usable structure that has a better foundation.

The Board noted that Mr. Waterman was proposing to add a second dwelling unit, attached to the structure that already exists on the site and that the existing house is close to the road, but the proposed unit would be on the south side, away from the road.

Mr. Waterman stated that the new unit would provide approximately 800 square feet of additional living space on one floor. The second floor of the new unit could be finished in the future, but is not part of this current application. The bedroom for the new unit will be on the first floor.

The Board noted that the applicant is requesting that there be two dwelling units on the site and that, for all practical purposes, there are two bedrooms in the original structure, even though there is one space upstairs, since the one space can be divided in two with a partition. The second unit is proposed to have one bedroom at this time.

The Board inquired about landscaping. Mr. Waterman made the following statements regarding the landscaping:

- There are lilacs on the west side. They are of a good size and they block the headlights of cars on Pelham Road from entering the windows of the existing house.
- In the front yard there are forsythia. These are being replaced with rhododendrons.
- There is a dispute with the neighbor on the east side about the location of the property boundary. There is a hedge along this side, but it may need to be moved if it is determined that the hedge is on the neighbor's property.

The Board asked Mr. Waterman to show the existing and proposed plants on the Site Plan.

The Board inquired about the number of parking spaces. Mr. Waterman stated that there are two parking spaces in the garage and two in the side area. Mr. Waterman stated that if the permit is granted, the two spaces in the garage will be used by the tenants. The tenants of both units will have access to both spots in the garage and both spaces in the outside parking area.

Mr. Waterman stated that there is weekly trash removal. He would prefer not to have a dumpster. The property has three trash barrels. The location for these barrels is not shown on the plan.

The Board inquired about where the trash barrels will be placed. Mr. Waterman stated that the tenant is responsible for putting the trash out and that it is kept in the garage between pick-ups.

The Board inquired about a lease and whether the lease includes information as to who is responsible for trash, yard maintenance and other management issues.

Mr. Waterman stated that he does not use a lease for this property.

The Board asked who is responsible for yard maintenance. Mr. Waterman stated that the owner is responsible for yard maintenance and that the tenant removes the snow. Mr. Waterman noted that the owner will probably be responsible for snow removal in the future.

The Board inquired about whether there would be a resident manager on the site. Mr. Waterman stated that one of the two tenants could be the resident manager.

The Board inquired as to whether construction plans were available. Mr. Waterman stated that he was having construction plans prepared by his builder.

Bonnie Weeks, the Building Commissioner, noted that standard building construction plans would be required before construction begins. She also noted that the elevations submitted with the application would be acceptable as part of the application for a building permit.

Mr. Waterman stated that he is planning to replace the garage doors and that there will be working lights on the garage as well.

Ms. Ford inquired about exterior lights.

Ms. Weeks inquired about the contents of the Management Plan, including snow removal, garbage, yard work.

Mr. Simpson read the letter from Robert Trasher and Erika Hamilton, dated March 3, 2005, in opposition to the application.

The Board opened the hearing for public comment.

Robert Thrasher of 21 Ledgewood Circle, Belchertown, spoke. He stated that he is the son of Mr. and Mrs. Thrasher who live at 367 Pelham Road, the abutting property on the east side of Mr. Waterman's property. He made the following comments and statements:

- He grew up in the house at 367 Pelham Road.
- His parents are elderly and his mother is ill.
- Neither he nor his parents wish to see another unit added to the property at 353 Pelham Road.
- The landlords of 353 Pelham Road do not reside on the property.
- The neighborhood is a single-family neighborhood.
- The tenants of 353 Pelham Road do not care for the property and have not maintained it properly.

The Board inquired about whether the police had been called regarding the activities at 353 Pelham Road and whether police reports were available. Mr. Thrasher, a member of the University of Massachusetts police force, noted that he had had conversations in the past with Michael Sullivan of the Amherst Police Department regarding the property at 353 Pelham Road.

Paul DiBenedetto of 236 Aubinwood Road stated that he owns multiple rental units in Amherst. He noted that if the landlord maintains the rental units properly then the tenants will keep them up as well and that the property will attract better tenants if it is in good condition.

Jim Slocumb of 345 Pelham Road stated that he is currently living next door to the property at 353 Pelham Road, taking care of his elderly father, and that he attended the hearing to represent his father, the owner of the abutting property. He agrees with the letter from Mr. Thrasher and concurs on the troubled history of the property. He stated that opposes the plan to build another unit.

Melvin Carlson of 360 Pelham Road spoke in opposition to the application. He made the following statements:

- He has lived across the street from the property under consideration since 1993.
- He questions whether the existing building meets the minimal requirements for a dwelling.
- He questions whether it is reasonable to allow the addition of another unit without requiring the upgrading of the existing unit.
- He stated that the level of maintenance on the property is not acceptable.
- He stated that he had written letters regarding removal of old cars from the property.
- He stated that it was immaterial whether the house was rented to students or to others because the level of maintenance did not seem to vary.
- He mentioned trash in the yard.
- He was concerned that the new unit might nominally be rented to 1 or 2 students but that more students could use the unfinished second floor as a bedroom.
- He stated that the garage should be totally emptied so that it could be used for the parking of vehicles. He believes that the tenants do not now use the garage for parking of vehicles.
- He suggested that the front of the existing house should be improved and that such improvements might make the current proposal more acceptable to the neighbors.

Alfreda Thrasher of 367 Pelham Road spoke in opposition to the application.

Thomas Warger of 156 Alpine Drive spoke in opposition to the application on behalf of himself and his wife, Christine. He read a letter that he had written, dated March 10, 2005, and presented it to the Board. His property abuts the Waterman property. The letter included the points:

- There have been problems in the past with dogs barking, a poorly-maintained yard and vehicles parked on the lawn for extended periods.
- If the Board decides to grant the Permit, the Board should consider imposing conditions having to do with limiting the number of tenants, and limiting the number of cars allowed to be parked on the site, and should require that a management plan be submitted that would prevent the property from becoming a nuisance.

Mark McCandlish of 136 Alpine Drive spoke in opposition to the application. He made the following comments:

- He and his family have lived in their house for thirteen years.
- They are opposed to the granting of the Special Permit.
- The proposed additional dwelling is unsuitable to the neighborhood.
- The proposed dwelling would double the size of the footprint of the building.
- The nature of the neighborhood would change if the second unit were permitted to be built.

Chris Waterman of 157 Pelham Hill Road, Mr. Waterman's wife, spoke in support of the application. She stated that there had been no students in the house for 12 to 15 years. She made the following points:

- Mr. Waterman had put on a new roof and new siding on the house.
- The cars and dogs that were the subject of complaints belonged to the tenants.
- The landlord could not dispose of the tenant's property.

Mr. Simpson asked the other Board members if they had enough information to make a decision.

Ms. Pyncheon stated that she wanted to see the police reports on the property.

Ms. Ford stated that she wanted to see real construction plans rather than the sketch drawings that had been submitted.

Mr. Simpson stated that he would like to see what the police reports show and then review construction plans at a subsequent meeting.

Ms. Pyncheon asked if there were current code violations on the existing property.

Ms. Ford asked about the applicant's plans to upgrade the existing structure.

Mr. Waterman stated that the upgrading of the existing structure would not be part of the work that is currently proposed. He noted that there is a tenant residing in the building. She is the owner of the cars and the dog.

Mr. Simpson stated that the Board would like the Planning Department staff to investigate whether there were code violations and to obtain records on calls to the police and calls to the animal control officer for the past five or six years.

Mr. Simpson MOVED to continue the public hearing to April 28, 2005. Mr. Ford SECONDED the motion. The Board VOTED unanimously to continue the hearing to April 28, 2005.

Continued Public Hearing April 28, 2005

At the continued public hearing Mr. Waterman again presented the petition.

Mr. Simpson inquired as to whether there was any new information.

Mr. Waterman stated that he had submitted better material describing his proposal but that the proposal had not changed substantially.

Mr. Waterman presented the new building elevations, including views of the building from the East, North, West and South sides, showing the placement of windows and doors and the design of the roof. He also presented new floor plans and described the locations of the exterior doors on the proposed unit. He stated that the new plans show only the proposed unit since no work is being proposed on the existing unit except the removal of a small section at the back of the building.

The Board noted that the newly submitted elevations and plans were better than the last ones submitted.

The Board inquired about the proposed siding for the new unit. Mr. Waterman stated that the existing house has vertical board siding. He showed photographs of his own house in Shutesbury which has the same type of siding. He stated that he built his own house. He stated that he plans to use the same type of siding on the proposed unit, which will match that on the existing house.

Ms. Ford noted that the conditions of the permit should require that the siding of the new unit match the siding of the existing unit.

The Board and Mr. Waterman both noted that the revised Management Plan shows that all maintenance for the property is the responsibility of the owner. Mr. Waterman stated that since he is now retired, he has the time to maintain the property.

The Board asked if there would be two rental units once construction is finished. There was some discussion about the timing of construction and Mr. Waterman's plans to begin work on the existing unit once the new unit is complete. Mr. Waterman agreed that there could be two rental units on the site, once construction is complete on the new unit.

The Board inquired about whether Mr. Waterman intends that the house will be owner-occupied. Mr. Waterman stated that he had some relatives who might wish to live there but that Mr. Waterman himself would not live there in the immediate future.

Ms. Ford asked whether there would be a responsible person who would rent one of the units.

Mr. Waterman stated that, in reality, there would not be two units available for rent for at least four years. It would take that long to obtain all the permits and do the construction that would result in there being two units for rent at one time on the property. He stated that after he completes the new unit, he will proceed to replace the back part of the existing house, which includes the kitchen and bath of the first unit. This will render the existing unit uninhabitable until the new kitchen and bath are finished.

The Board asked how long it would take to construct the proposed new unit. Mr. Waterman stated that once construction begins he expects to complete construction on the new unit in six months.

Ms. Pyncheon asked about the tenants in the existing apartment.

Mr. Waterman stated that the tenant who is living in the existing house will be there until the new addition is built. At that time she will need to move in order to allow construction to start on the old part of the house.

The Board noted that they had received a submission by the applicant in answer to the criteria listed in Section 10.38 of the Zoning Bylaw. Mr. Waterman began to read his answers out loud and then suggested that the Board read them silently. The Board then proceeded to read Mr. Waterman's submission silently.

The Board asked Bonnie Weeks if she had seen the revised plans and she stated that she had seen the new plans.

Mr. Simpson stated that the Board had received a new lighting plan and that all lights will be facing down onto the property.

Mr. Simpson asked Mr. Waterman about the poultry on the property. There was discussion about the single duck or goose that lives on the property and is owned by the tenant. The Board determined that this animal was a pet and would be permitted to remain on the property. Under Section 5.014 of the Zoning Bylaw the Board may allow, with a Special Permit, the keeping of a duck or goose in the R-N zone.

Mr. Simpson stated that since the last meeting the Board members had received an email from the Planning Department reporting on the police calls and calls to the animal control officer. He stated that, according to this email, there had been no police calls or animal complaints regarding this property since 1998. He noted that the property seemed to have quieted down in the past seven years.

For the record, Mr. Simpson noted that there had been three calls in 1998, including one animal complaint, seven calls in 1997, with no animal complaints, one call in 1996, which was an animal complaint, one call in 1995, which was an animal complaint, and two calls in 1994, one of which was an animal complaint and one of which was a noise complaint.

The Planning Department received an email from the Building Commissioner, Bonnie Weeks, in response to a query regarding possible building code violations. The email, dated April 11, 2005, from Ms. Weeks, stated that there had been "no housing complaints" filed on this property, although "it is unlikely that the existing house meets current code". The email noted that this does not necessarily mean that the house is in violation of building codes, since it was built prior to the new building code going into effect.

The Board invited comments from the public.

Alfreda Thrasher of 367 Pelham Road, an abutter, made the following comments:

- She lives next door to 353 Pelham Road.
- Mr. Waterman has been cutting and trimming the vegetation on his property but he doesn't finish projects that he begins.
- She is concerned that four years of construction is too much.
- She is concerned about potential student tenants.

Tom Warger of 156 Alpine Drive, an abutter, spoke about the application. He made the following comments:

- If the Board grants the applicant's request there are some conditions that would make the new addition more tolerable to the abutters.
- The Board should look at the total maximum number of people who will be allowed to live in both units. The abutters are concerned about the possibility of there being up to four unrelated people in each unit. Mr. Warger suggested that the Board limit the total number of tenants to six or fewer.
- The abutters are concerned that the projects will take too long to be finished or will not be finished. The Board should place some conditions on the permit regarding the length of time allowed for the construction process.
- The abutters would like to request screening along the south property line, in the form of an evergreen hedge, to screen the view from the properties to the south.

Mark McCandlish of 136 Alpine Drive, also an abutter, made the following comments:

- He is concerned about the addition of a second rental unit.
- A second rental unit would change the character of the neighborhood.
- He agrees with Mr. Warger about the need for an evergreen hedge along the south property line, if the second unit is permitted.
- Such a hedge will screen car traffic as well as views of the house.
- There should be a maximum time limit on construction for the units of 4 years.

Chris Waterman, of 158 Pelham Hill Road, Shutesbury, spoke in support of the application and made the following comments:

- There will be fewer bedrooms in the proposed duplex than there were in the old house, prior to the back portion being removed.
- There will be only three bedrooms, two in the existing unit and one in the proposed unit.

Mr. Waterman stated that he is willing to plant evergreens along the back of the property.

Robert Thrasher, Alfreda Thrasher's son spoke about the application and made the following comments:

- He has worked in Amherst for twenty-one years.
- He is aware of the fact that sometimes landlords do not tell the truth about the number of tenants who live in a unit.
- He would like a strict limit on the number of people allowed to live in the house.

Ms. Ford stated that the Board should require that a new landscape plan be submitted.

Barbara Ford MOVED to close the evidentiary portion of the public hearing. Susan Pynchon SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting

At the Public Meeting, the Board discussed the application. Mr. Simpson noted that the application was being made under Section 3.321 of the Zoning Bylaw which governs two-family detached dwellings. Mr. Simpson noted that two-family dwellings are allowed by Special Permit in the R-N zone. He also noted that Section 3.321 does not list any special conditions that must be met for a two-family dwelling.

Mr. Simpson noted that the property and the proposal fit the dimensional and other requirements of the Bylaw as to setbacks, lot size, building coverage, lot coverage and parking. Mr. Simpson stated that, in order to grant the Special Permit, the Board would need to find that the proposal was suitable as to its location and that the management plan and floor plans were acceptable.

Ms. Pynchon asked whether a resident manager might be able to address some of the issues that had been raised by the neighbors.

Mr. Simpson stated that either the resident manager's or the owner's name needed to be placed on file with the Building Commissioner's office and with the Police Department.

The Board discussed other properties in town where a resident manager has been required.

Ms. Ford stated that she was concerned about the potential use of the unfinished second floor as a bedroom. Mr. Simpson noted that there could be conditions limiting the number of occupants to two and stating that there would be no occupancy of the attic. Ms. Weeks noted that the limitation should be expressed as "no more than two unrelated tenants" shall be allowed per dwelling unit.

The Board discussed placing a time limit of 2 or 3 years on the permit to encourage a timely construction process, but noted that the applicant could apply for renewal of the permit after it expires if he has not begun or finished construction.

Ms. Weeks noted that the permit would expire after two years, by state law, unless construction is started and acted on in a faithful manner. She noted that the applicant can come back before the Board after two years to obtain a renewal of the permit if he has not begun or progressed with construction in a timely manner. At the time of the renewal

application the Board could vote to have the partially built structure removed if construction is not progressing in a continuous manner.

Susan Pynchon noted that a resident manager could help to control noise, nuisance and the general appearance of the property.

Barbara Ford noted that a resident manager would only be needed when two units have been rented. The resident manager could then be chosen from among the tenants.

The Board discussed the need for screening and landscaping. The Board noted that there should be a clear delineation of the property lines, in order to indicate to tenants where Mr. Waterman's property ends and the neighbors' properties begin. There should also be plantings along the back property line. These should be planted sooner rather than later so that they can be established before the new unit is completed.

The Board also noted that Mr. Thrasher, the abutter on the east side, had had the property line surveyed and staked. The stakes show that the large evergreen hedge along the east side of the Waterman property is on Mr. Waterman's land, although some of the branches protrude into Mr. and Mrs. Thrasher's property.

The Board discussed the fact that the existing driveway is only 10 feet wide, not wide enough for cars to park along the edge of the driveway, but that there is ample space for cars to park in the parking area adjacent to the driveway and in the garage. Therefore there is no need for cars to park along the driveway on a regular basis. The Board recognized that, from time to time, there may be visitors who would park in the driveway.

The Board acknowledged that there is a substantial evergreen screen along the east property line, clearly delineating that boundary, and that this should prevent tenants from driving onto the adjacent property. The Board also noted that the parking area on the east side of the property is screened by the evergreen hedge on that side, which should prevent headlights from shining onto the Thrashers' property.

The Board recognized Mr. Waterman who presented information on properties along Pelham Road (between numbers 195 and 289) and on Jenks Street that contained two or three units.

Findings:

Under Zoning Bylaw Section 5.014 the Board found that:

The raising or keeping of poultry for use by the residents of the premises is an accessory use that is allowed with a Special Permit in the R-N zone and that the current tenant of this property may keep one duck or goose as a pet under this Special Permit.

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other multi-family houses (primarily two-family homes) in the vicinity, on Jenks Street and along Pelham Road and that Pelham Road is a major road into town and thus heavily-traveled.

- 10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because there will be conditions in the permit which will control noise, lights and offensive structures and limit the number of tenants.
- 10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because the second dwelling unit will be built according to the plans which have been approved by the Board, conditions will be imposed in the permit regarding numbers of tenants, hours of parties, management of the property, screening of adjacent properties and there is adequate parking on the site for two dwelling units.
- 10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the new unit will be built according to the approved floor plans which show that the rooms and points of egress from the unit are adequate for the use as a dwelling unit, the required number of parking spaces can be accommodated and the site is large enough to provide adequate recreational space.
- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because no signs are being proposed and the requirement for two parking spaces per dwelling unit has been met.
- 10.387 and 10.388 – The proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to streets, property or improvements and the proposal ensures adequate space for the off-street loading and unloading of vehicles because the driveway will be widened to 12 feet in accordance with the Zoning Bylaw requirements and there is ample space for the parking and maneuvering of four cars on the site.
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the property is connected to the town sewer and the property owner has a contract with a local trucking company for weekly pick up of trash and recyclables. There are three trash barrels available for tenant use and these will be stored in the garage between pick ups.
- 10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because there is already a substantial evergreen hedge along the east property line and a similar hedge will be planted along the south property line. The applicant has also provided a plan for landscaping of the property and the conditions of the permit will require that the landscaping be maintained continuously.
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because the conditions of the permit require that all exterior lighting shall be downcast and shall not shine onto adjacent properties.
- 10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the new unit will be of a similar size as the other homes in the neighborhood and the building elevations approved by the Board show that the windows and doors will be of a size compatible with the existing dwelling unit and with other houses in the neighborhood.
- 10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because the lot is large and open and there is ample space for passive and active recreation in the yard.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

Susan Pynchon MOVED to approve the application, with conditions. Barbara Ford SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Earl A. Waterman, to add a second dwelling unit to create a two-family house, under Section 3.321 of the Zoning Bylaw, and to allow Mr. Waterman's current tenant to keep one goose or duck as a pet under Section 5.014, at 353 Pelham Road, (Map 15B, Parcel 59, R-N Zone).

TOM SIMPSON

BARBARA FORD

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals, based on the documents approved on April 28, 2005, as listed below:

- Drawings entitled "Preliminary Perspectives" showing the existing and proposed structures from six different points of view, prepared by F. R. Wilson of Shutesbury.
- Drawings entitled "East Elevation", "North Elevation", "West Elevation", and "South Elevation", prepared by F. R. Wilson, Building and Contracting, dated March 25, 2005.
- Drawings entitled "Foundation Plan", "First Floor Plan", "Second Floor Plan", "Roof Plan", and "Section at A-1" dated March 25, 2005.
- A document entitled "Management - Lights", showing a plan of exterior lights and text regarding the condition of the existing lights and plans for new lights.
- A revised "Management Plan" dated April 22, 2005, listing the owner as the responsible party for all property maintenance issues.
- A revised Site Plan showing existing and proposed plantings along with a text describing the applicant's landscaping plans

hereby grants a Special Permit to Earl A. Waterman, to add a second dwelling unit to create a two-family house, under Section 3.321 of the Zoning Bylaw, and to allow Mr. Waterman's current tenant to keep one duck or goose as a pet under Section 5.014 of the Zoning Bylaw, at 353 Pelham Road, (Map 15B, Parcel 59, R-N Zone) with the following conditions:

1. The property shall have a designated resident manager or shall be owner-occupied.
2. The name and phone number of the resident manager if there is one, or the owner if the property is owner-occupied, shall be on file with the Building Commissioner's office and the Police Department.
3. Notwithstanding the requirements of Section 12.142 of the Zoning bylaw, no more than two (2) unrelated persons shall occupy each dwelling unit.
4. A modification of this Special Permit shall be required in order to finish the attic and use it as habitable space.
5. This permit shall expire two (2) years after the date of its filing with the Town Clerk. Any renewal of this Special Permit shall require a new application.

6. Construction for the second dwelling unit shall be completed within one (1) year from the date that the concrete foundation is poured. The date of pouring shall be verified by the Building Commissioner, to whom the applicant shall send advance notice of the pouring sufficient to allow for a site visit and confirmation of the start date. In the event such notice is not provided, or arrives late, the Board hereby authorizes the Building Commissioner to set the effective start date for construction of this unit based upon the information available.
7. The structure shall be built according to the floor plans and elevations approved on April 28, 2005, and the exterior siding shall match the siding on the existing structure.
8. The driveway shall be 12 feet wide, in accordance with Section 7.712 of the Zoning Bylaw.
9. Notwithstanding the provisions of Section 7.000 of the Zoning Bylaw, all parking shall occur in the designated spaces. The access route of the driveway shall not be used as an overnight parking area.
10. A dense evergreen hedge or solid fence shall be installed along the south property line or anywhere south of the garage, and shall be continuously maintained. If a hedge is installed the plants shall be at least six feet tall at the time of planting.
11. The hedge or fence shall be installed prior to the issuance of a building permit for construction of the new dwelling unit.
12. Adequate storage shall be provided for tenants of both units in the garage, in the attic over the garage, or in the case of the second unit, storage may be provided in the basement for tenants of the second unit only.
13. The property shall be managed according to the Management Plan approved by the Board on April 28, 2005.
14. The property shall be landscaped according to the landscape plan approved on April 28, 2005, with screening installed on the south side in accordance with condition # 10 above, and the landscape shall be continuously maintained.
15. The property shall be maintained and kept clear of brush, litter, debris, trash and unregistered vehicles.
16. All exterior lighting shall be downcast and shall not shine onto adjacent properties.
17. After 12 midnight, no sound generated on this property above normal site background levels shall carry beyond the property boundary, nor shall any outdoor gathering of residents and/or visitors be conducted after that time.
18. This Special Permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as of May 2005.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE